

APPENDIX II-B

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)

FIS Number _____

Rule Number En 1300

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| 1. Agency Name & Address: Department of Energy 21 South Fruit Street, Suite 10 Concord, NH 03301 | 2. RSA Authority: <u>RSA 374:34-a</u> |
| | 3. Federal Authority: _____ |
| | 4. Type of Action: |
| | Adoption <u>X</u> |
| | Amendment _____ |
| | Repeal _____ |
| | Readoption _____ |
| | Readoption w/amendment _____ |
| | Interim rule _____ |
| | 5. Have the rules expired? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| | Date Expired: _____ |

6. Short Title: **En 1300 – Utility Pole Attachments**

7. Contact Person:

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

Remember:

- (a) A copy of the proposed rule or an annotated copy of the amended rule must accompany this form. The annotated copy shall use [brackets] to indicate deleted material, and underlining for added material, or any other annotation style allowed in Section 5.4 in Chapter 4 of the Drafting and Procedure Manual for Administrative Rules.
- (b) Please provide the methodology and any calculations used in determining the fiscal impact. Where appropriate or necessary, please attach a worksheet detailing the methodology and associated calculations.
- (c) This form may be replicated to expedite preparation.
- (d) Please allow 10 working days from day of receipt for the Office of Legislative Budget Assistant to complete the fiscal impact statement. Additional information about this form is in Section 2.3 in Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

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- (e) Please provide the following information and attach additional sheets if necessary:

NOTE: Pursuant to RSA 541-A:5, IV the fiscal impact of the proposed rule which was previously effective but has expired, or of a proposed rule which adopts a current agency policy, procedure or practice as a rule for the first time, shall not be assessed as an existing rule but as a proposed rule which is not yet effective.

- (1) Summarize the intended action and the proposed rule. The intended action is defined by RSA 541-A:5, VII as the proposed adoption, amendment, readoption, readoption with amendment, or repeal of a rule pursuant to RSA 541-A.

The Department of Energy (Department) intends to adopt new Chapter En 1300 rules regarding utility pole attachments, pursuant to RSA 374:34-a, as amended effective July 1, 2021. The substance of the proposed new rules is the same in most instances as the provisions of Parts Puc 1301, 1302, and 1303 of the existing Chapter Puc 1300 rules of the Public Utilities Commission (PUC), except for the addition of provisions for One-Touch Make-Ready (OTMR) procedures and timelines as required under Senate Bill 88 (2021). Part Puc 1304, which covers dispute resolution and related pole attachment fee rate-setting, will remain with the PUC in an amended version of its Puc 1300 rules. The En 1300 rules, pursuant to the statutory mandate of RSA 374:34-a, provide for the regulation of terms, conditions, rates and charges for utility pole attachments that are just, reasonable, and in the public interest, by the Department and the PUC rather than by the Federal Communications Commission, under applicable federal law. As noted above, the Department's new rules effectively incorporate "the provisions of [OTMR] as adopted by the Federal Communications Commission in 47 CFR 1.1411(j)," pursuant to RSA 374:34-a, III, as amended by Senate Bill 88, effective on October 9, 2021.

- (2) Is the cost associated with this intended action mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.

Any costs associated with these rules are the direct result of RSA 374:34-a; the rules implement the statute and do not impose any other costs. Accordingly, there are no additional costs mandated solely by the rules.

- (3) Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule. Please provide the methodology and any calculations used in making your determination. If there is no cost, please explain why.

There are no incremental or net costs to the state as a result of the proposed new rules or the corresponding provisions of the existing Puc 1300 rules.

- (4) To the extent the proposed rule had expired, please indicate the cost of the expired rule as you do for a new rule, and if applicable, the difference in cost of any proposed change from the expired rule. Please provide the methodology and any calculations used in making your determination. If there is no cost, please explain why.

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These are new rules to be adopted by the Department and the corresponding provisions of the existing Puc 1300 rules have not expired.

- (5) Describe the costs and benefits to the state general fund which would result from this intended action.

There are no costs or benefits to the state general fund as a result of the proposed new rules or the corresponding provisions of the existing Puc 1300 rules.

- (6) Explain and cite the federal mandate for the intended action, if there is such a mandate. How would the mandate affect state funds?

There is no federal mandate unless a state chooses to assume regulation of utility pole attachments. Under 47 U.S.C. §224(c), states have the option of regulating pole attachments, with the Federal Communications Commission required to resolve pole attachment disputes only involving states that have *not* adopted enabling legislation and rules. Pursuant to 47 U.S.C. §224(c)(3)(A), a state shall not be considered to regulate rates, terms, and conditions for pole attachments unless the state has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments. New Hampshire assumed such regulation pursuant to the interim rules adopted in January 2007 and the existing Puc 1300 rules, which first became effective in December 2009 and were most recently amended in September 2018. The new En 1300 rules would serve to continue that regulation following the reorganization of the PUC and the creation of the Department, effective as of July 1, 2021.

- (7) Describe the cost and benefits to any state special fund which would result.

There are no costs or benefits to any state special fund as a result of these rules.

- (8) Describe the costs and benefits to the political subdivisions of the state.

These rules are neutral as applied to political subdivisions of the state, although it may be to the benefit of any political subdivision seeking pole attachments to be able to bring any disputes to the PUC in Concord, as opposed to more distant and less locally responsive federal authorities in Washington, DC, and the En 1300 rules serve to implement the state regulatory structure that permits such “reverse preemption” to be effective.

- (9) Describe the costs and benefits to the citizens of the state.

There are no specific direct costs to citizens of the state. It may be to the advantage of any entities seeking pole attachments, and public utilities and other pole owners providing such attachments, to be able to bring any disputes to the PUC in Concord, as opposed to more distant and less locally responsive federal authorities in Washington, DC, and the En 1300 rules serve to implement the state regulatory structure that permits such “reverse preemption” to be effective.

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- (10) Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.

The En 1300 rules do not impose any costs that are particular to independently owned businesses or businesses employing fewer than 10 employees, other than normal administrative costs. Such businesses may benefit, however, from having a nearby and locally responsive forum for resolving disputes over pole attachments. As noted above, the En 1300 rules effectively incorporate OTMR process and timeline provisions based on regulations of the Federal Communications Commission set forth in 47 CFR 1.1411(j). Those rules are expected to provide for a more streamlined, segmented, transparent, and expedited process and timeline for completing the make-ready work necessary to permit new attachments on utility poles. The Department anticipates that any incremental costs reasonably incurred by utility pole owners to comply with the proposed new OTMR process and timeline rules will be passed on to the attaching entities requiring performance of the make-ready work. Assuming for the purposes of this request that utility pole owners and attaching entities in New Hampshire may properly be considered “independently owned businesses,” the Department requests a fiscal impact statement with a specific analysis of the proposed changes in the make-ready work process and timelines resulting from the adoption of OTMR. It is difficult to estimate the potential financial impacts of those proposed rules on pole owners or attaching entities, as well as the ultimate effects on their respective customers in the state. The Department therefore believes that the fiscal impact of the proposed changes may be significant but is indeterminate.